

February 20, 2014

Bob Nelson, Chief of Staff
Supervisor Peter Adam, 4th District
Santa Barbara County Board of Supervisors
511 East Lakeside Parkway, Suite 47
Santa Maria, CA 93454

Re: Your Request for Advice
Our File No. A-14-010

Dear Mr. Nelson:

This letter responds to your request on behalf of Supervisor Peter Adam of the Santa Barbara County Board of Supervisors for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ Please note that we only provide campaign-related advice based on the Act and not other laws that could apply to similar conduct.²

QUESTIONS

1. What restrictions, if any, does the Act impose on Supervisor Adam in connection with his speaking about and fundraising for a ballot initiative?
2. What restrictions, if any, does the Act impose on Supervisor Adam's county-paid staff in assisting him in the above activities or advocating for the initiative on their personal time?
3. Is Supervisor Adam required to report contributions made by persons at his request to

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Therefore, we offer no opinion on the application, if any, of restrictions relating to the use of public resources governed, for example, in Section 8314, Penal Code Section 424 and the California Constitution. In any event, you indicate in your request that neither you nor your staff will use county resources in engaging in the activities about which you inquire.

a committee that supports the ballot initiative?

CONCLUSIONS

1. Supervisor Adam is not prohibited from speaking about the initiative nor, subject to certain restrictions described below, is he prohibited from controlling or soliciting contributions to any ballot measure committee formed to support the initiative.
2. The Act does not prohibit county staff from advocating for the initiative.
3. No.

FACTS

A ballot initiative is being circulated among Santa Barbara County voters that would require the county to maintain county facilities in their current state or better. Supervisor Adam, a proponent listed on the petition, wishes to speak about and raise funds for the initiative. Members of his staff would also like to advocate for the initiative on their personal time and without using any county resources.

A primarily formed ballot measure committee, the “Fix Santa Barbara County – Committee for Measure ____” (the “Committee”), has been formed to support the initiative. In our conversation of February 4, you indicated that Supervisor Adam has no involvement with the Committee. The Committee’s activities are led by a steering committee of which Supervisor Adam is not a member. You, however, his chief of staff, are a member of the steering committee. You also stated that Supervisor Adam still has a campaign committee and bank account that were opened when he was running for office in the 2012 election.

ANALYSIS

Question 1- Speaking and fundraising.

The Act does not prohibit a candidate from speaking in support of or in opposition to an initiative. The Act also does not prohibit a candidate from soliciting contributions to a committee he or she does not control, such as a ballot measure committee supporting or opposing an initiative. In the latter case, contributions made to the non-controlled committee are not considered contributions to the soliciting candidate. (Regulation 18215(d).)

The only provisions of the Act directly implicated by your facts concern the possibility that you would form and control a ballot measure committee to support the initiative. The Act prohibits a candidate from having more than one controlled committee for election to office and one bank account for that committee. (Section 85201.) Specifically, Section 85201(a) requires a candidate for elective office to establish one campaign bank account for that office and all contributions made to and campaign expenditures made by the candidate must be processed

through that account (Section 85201(c) and (e)). The Commission has consistently interpreted these provisions to prevent a candidate from controlling any committee other than his or her committee for election to a specific office, unless specifically permitted otherwise. This interpretation has commonly been referred to as the “one-bank-account rule.”

The term “candidate,” as defined by Section 82007, includes elected officials at the state and local level. Thus, Supervisor Adam is a “candidate” and is subject to the prohibitions of Section 85201, meaning that, unless an exception applies, he cannot control any type of committee other than one formed for his or her election to office.

Not long after Section 85201 was added to the Act in 1988 as part of Proposition 73, questions arose concerning whether a candidate could still control a ballot measure committee. These questions were based not only on the restrictions imposed by the “one-bank-account rule” but also on concerns that candidates would use ballot measure committees to circumvent the Act’s contribution limits that at that time applied to all state and local candidates. At the time, several elected state officers maintained ballot measure committees that were receiving contributions well in excess of the Act’s limits. The issue formally came before the Commission when then-Lieutenant Governor Leo T. McCarthy requested a formal opinion on several questions about the application of Proposition 73 to candidate-controlled ballot measure committees. In response to the request, at its February 1990 meeting, the Commission directed staff to prepare a memorandum discussing this issue generally and, in particular, to address the extent to which the Commission could constitutionally regulate these types of committees. (See Memorandum to Commission, March 2, 1990, “Candidate Controlled Ballot Measure Committees Under the Political Reform Act: Issues Raised In Connection With The Request of Leo T. McCarthy, Lt. Governor of California.”)

At its March 1990 Commission meeting, staff presented the Commission with three options on regulating these types of committees. In presenting these options, based on several concerns, staff expressed doubts about the constitutionality of prohibiting candidates from controlling ballot measure committees. The options were therefore presented on the premise that candidates could control ballot measure committees, and addressed instead how the Commission might regulate these committees to avoid potential circumvention of the Act’s contribution limits. These options essentially were: (1) Do not regulate these committees any differently than noncandidate controlled ballot measure committees; (2) Regulate contributions to these committees under the Act’s contribution limits; or (3) Restrict transactions between these committees and the candidate’s controlled committee for elective office. (*Ibid.*) After extensive discussion, the Commission accepted the third option. (See Minutes, March 13, 1990 Commission Meeting.) Since then, as a specific and narrow exception to the “one-bank-account rule,” the Commission has permitted candidates to control ballot measure committees, so long as funds in the committee are used for ballot measures only and not for expenditures on political, legislative or governmental matters that should be made through the candidate’s committee for election to office. (See generally, Memorandum to Commission, September 9, 2013, “Petition to Amend Regulation 18521.5: Distribution of Leftover Funds by Ballot Measure Committees

Controlled by Candidates for Elective State Office,” which provides additional background on the “one-bank-account rule” and candidate controlled ballot measure committees.)

Accordingly, it is permissible under the Act for Supervisor Adam to form and control a ballot measure committee supporting this initiative and to solicit contributions to that committee. However, this is permitted on the condition that a ballot measure committee controlled by Supervisor Adams does not make contributions to support or oppose candidates, including himself. (*Karpel* Advice Letter, No. A-93-356; *Olson* Advice Letter, No. A-89-363; *Weems* Advice Letter, No. A-91-448.) If, however, the Committee does, in the future, make contributions to support or oppose candidates in an election, Supervisor Adam will be subject to the prohibitions of Section 85201(a), as discussed above.

Question 2 - Staff advocating for the initiative.

Supervisor Adam’s staff is not prohibited by the Act from advocating for the initiative.

Question 3 - Reporting contributions.

Nothing in the Act requires Supervisor Adam to report contributions he has solicited for the initiative. (See Regulation 18215(d), referenced above.)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl